IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.859 OF 2007

Ramesh Nagnath Kadam ...Appellant

vs.

Brihanmumbai Municipal Corporation & Ors. ....Respondents

Mr.M.P.Vashi i/b M/s.M.P.Vashi & Associates for the Appellant
Ms Joglekar for B.M.C.
Mr.R.V.Govilkar for Respondent No.2.

CORAM: A.S.OKA,J.
DATE : OCTOBER 30, 2007.

P.C.:

1. Heard learned Counsel for the appellant, the learned Counsel for the first Respondent, and the learned Counsel for the second Respondent.

2. By the order impugned in this Appeal dated 25th October 2007, the learned trial Judge has declined to grant ad-interim order on a notice of motion taken out by the Appellant-plaintiff. The dispute in the suit is about the constitution of Wards committee under section 50 (TT) of the Mumbai Municipal Corporation Act,1888 (hereinafter referred to as the said Act of 1988). Under section 50-TT of the said Act, the Municipal Corporation is required to constitute not more than 25 Wards committees each comprising of such contiguous electoral Wards as may be decided by the Corporation. Each wards Committee consists of the Councillors representing electoral wards within the territorial area of the Wards Committee and such number of other members, not

exceeding three nominated by the Councillors from amongst the members of recognised non Government Organisations and community based organisations engaged in social welfare activities working within the area of the Wards Committee. The Maharashtra Municipal Corporations Municipal Councils, Nagar Panchyats (norms for representation of the non-Government organisations and community based organisations in the wards committee) Rules,2000 have been framed by the State Government which lay down the norms for recognition of non Government Organisations and community based organisations as well as qualification for nomination as member of the Wards committee. Rule 5 reads thus :

"5. An Organisation shall submit an application for their representation in the Wards Committee, to the Ward Officer of the concerned Ward. The Ward Officer shall put all the applications before the elected Councillors of the Wards Committee. The elected Councillors shall then nominate from amongst the applications the members of the Ward Committee. If there is no consensus on the nomination of the members of the Ward Committee, they shall be chosen by the elected Councillors by majority.

. Provided that, a member so nominated shall cease to be the member of the Wards Committee if he resigns or is removed from the membership of the organisation which he represents on the Wards Committee. "

3. The suit is filed by the Appellant for declaration that the second defendant is not qualified to contest the election to the post of a member on the Wards committee as a member of the NGO. It is stated that the nomination/selection is scheduled tomorrow i.e. 31st October 2007. Earlier it was to be made on 26th October 2007. Now it is postponed to 31st October 2007.

4. The learned Trial Judge rejected the prayer for grant of ad-interim relief on the ground that the suit may not be maintainable in view of a remedy available under section 33 of the said Act. The learned Trial judge has made the notice of motion returnable on 2nd November 2007.

5. The submission of the learned counsel for the Appellant is that the remedy of filing election dispute under section 33 of the said Act is not available. He submitted that ad-interim relief has been refused on a completely erroneous ground. He submitted that this was a fit case for granting ad-interim relief. He lastly submitted that till the notice of motion is heard, selection/election may be postponed. I have also heard the learned counsel for the second Respondent who has opposed the prayer for grant of ad-interim relief.

6. Prima facie it appears to me that section 50TT does not contemplate an election. It appears to me that Rules of 2000

contemplate that the nomination shall be made by the elected Councillors of Wards Committee. If there is no consensus, the members shall chosen by the elected Councillors by majority. Thus, the Rules contemplate nomination/or selection and not election. Therefore, the view expressed by the learned trial Judge at ad-interim stage on the maintainability of the suit does not appear to be correct.

7. There is no prayer made in the notice of motion taken out before the trial court restraining the municipal corporation from completing process of nomination/selection. The relief claimed in the notice of motion before the trial court is that the injunction be granted restraining the second Respondent from contesting the election and restraining the first respondent from allowing the second Respondent to contest the election.

8. The notice of motion is still pending. The process of selection/nomination is to take place tomorrow. At this stage, when notice of motion is yet to be heard, no order can be passed preventing the consideration of nomination of the second Respondent.

9. Therefore, in my view, as of today, no case is made out for grant of the drastic ad-interim relief prayed for. However, it must be observed that the view taken by the learned Trial Judge regarding availability of a remedy under

section 33 of the said Act 1888 appears to be erroneous.

10. Hence, Appeal is disposed of by passing the following order:

i) The learned trial judge will hear and decide the notice of motion which is made returnable on 2nd November 2007 as expeditiously as possible and preferably on the same day. If notice of motion cannot be heard on the same day, the same will have to be heard in vacation by the concerned Vacation Judge.

ii) It is made clear that the notice of motion will be decided without being influenced by the tentative observations made in the impugned order. It is obvious that the observations made by this court in this order are only prima facie observations made only for consideration of this Appeal against an ad-interim order. The notice of motion will be decided on its own merits.

iii) All contentions of the parties in the notice of motion are expressly kept open.

iv) It is obvious that the decision/action of the first Respondent on the nomination of the second Respondent will be subject to final outcome of the pending notice of motion and the pending suit.

v) Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE